Supreme Court, U.S.
FILED
APR 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1406

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

BERNARD S. NEISTEIN,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

JAMES J. GROGAN
Counsel of Record
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
(312) 346-0690
Attorney for Respondent

Photex — 444 North Wabash Avenue — Chicago 60611 — 321-0223

BEST AVAILABLE COP

QUESTIONS PRESENTED

I. AN ILLINOIS ATTORNEY DISCIPLINARY RULE PROHIBITING LOANS OR GIFTS TO A JUDGE EXCEPT THOSE LOANS OR GIFTS MADE AS CAMPAIGN CONTRIBUTIONS DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

II. PETITIONER HAS FAILED TO INVOKE FEDERAL JURISDICTION PURSUANT TO 28 USC §1257(a) AS TO HIS DUE PROCESS CLAIM BECAUSE HE FAILED TO TIMELY BRING HIS FEDERAL CLAIM TO THE ATTENTION OF THE ILLINOIS SUPREME COURT WITH FAIR PRECISION AND BECAUSE HE FAILED TO PROMPTLY ASSERT A CLAIM OF BIAS OR PREJUDICE IN THE ILLINOIS SUPREME COURT.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....i

TABLE OF AUTHORITIES.....iii-v

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.....vii-xi

INTRODUCTION.....1

STATEMENT OF THE CASE.....1-12

SUMMARY OF ARGUMENT.....12-14

ARGUMENT.....14

I. An Illinois attorney disciplinary rule prohibiting loans or gifts to a judge except those loans or gifts made as campaign contributions does not violate the equal protection clause of the United States Constitution.....14

II. Petitioner has failed to invoke federal jurisdiction pursuant to 28 USC §1257(a) as to his due process claim because he failed to timely bring his federal claim to the attention of the Illinois Supreme Court with fair precision and because he failed to promptly assert a claim of bias or prejudice in the Illinois Supreme Court.....20

CONCLUSION.....27

TABLE OF AUTHORITIES

Cases: Page

City of Rockford v. County of Winnebago, 186 Ill.App.3d 303, 542 N.E.2d 423 (1989).....25

Consolidated Turnpike Company v. Norfolk and Ocean View Railway Company, 228 U.S. 326 (1913).....23, 24

Duffield v. Charleston Area Medical Center, Inc., 503 F.2d 512 (4th Cir. 1974).....25

E & E Hauling, Inc. v. Pollution Control Board, 107 Ill.2d 33, 481 N.E.2d 664 (1985).....25

Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).....15, 16

In re Corboy, et al., 124 Ill.2d 29, 528 N.E.2d 694 (1988).....16, 17

In re Mitan, 75 Ill.2d 118, 387 N.E.2d 278 (1979) cert.denied, 444 U.S. 916 (1979).....24

In re Neff, 83 Ill.2d 20, 413 N.E.2d 1282 (1980).....16

In re Neistein, 132 Ill.2d 104, 547 N.E.2d 198 (1989).....17, 19

Cases: Page

McGoldrick v. Campagnie Generale, 309 U.S. 430 (1940).....20

New York ex rel. Bryant v. Zimmerman, 278 U.S. 63 (1928).....21

People v. Carlson, 79 Ill.2d 564, 404 N.E.2d 233 (1980).....24

Street v. New York, 394 U.S. 576 (1969).....21

Waste Management of Illinois v. Pollution Control Board, 175 Ill.App.3d 1023, 530 N.E.2d 682 (1988).....25

United States Constitution:

U.S. CONST. amend. XIV, § 1.....14

United States Statutes:

28 U.S.C. § 1257(a)(1986).....20

Illinois Rules
and Statutes: Page

Ill.Rev.Stat ch. 110A., Art.VIII,
Rule 7-110(a)(1987)(amended 1988)...passim

Illinois Code of Professional
Responsibility EC 7-34 (1970).....16

Ill.Ann.Stat. ch. 110A, Art.
VIII, Rule 7-110 committee comments
(Smith-Hurd 1980).....18

Ill.Rev.Stat. ch. 46, para.
9-1 to 9-27 (1987).....18

Ill.Rev.Stat. ch. 110A, Art.I,
Rule 65(c)(4)(1987).....ix-x

No. 89-1406

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

BERNARD S. NEISTEIN,

Petitioner,

vs.

ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

RESPONDENT'S BRIEF IN OPPOSITION

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, §1.

Disciplinary Rule 7-110(a) of the Illinois Code of Professional Responsibility, provides:

> A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal except those gifts or loans which a judge or a member of his family may receive under Rule 65(C)(4) of the Code of Judicial Conduct, except that a lawyer may make a contribution to the campaign fund of a candidate for such office.

Ill.Rev.Stat. ch. 110A, Art. VIII, Rule 7-110(a) (amended 1988).

The Illinois Disclosure of Campaign Contributions and Expenditures Act provides, in pertinent part:

> §9-10. The treasurer of every state political committee and the treasurer of every political committee shall file with the Board, and the treasurer of every local political committee shall file with the county clerk, reports of campaign contributions and expenditures on forms to be prescribed or approved by the Board. The treasurer of every political committee that acts as both a state political committee and a local political committee shall file a copy of each report with the county clerk.

Ill.Rev.Stat. ch. 46, para. 9-10 (1987).

> §9-17. All statements and reports filed under this Article with the Board or county clerk shall be available for examination and copying by the public at all reasonable times. Such person examining a statement or report must first fill out a form prepared by the Board identifying the examiner by name, occupation, address and telephone number, and listing the date of examination and reason for such examination. The Board shall supply such forms to the county clerks annually and replenish such forms upon request. The Board or county clerk, as the

> case may be, shall promptly notify each political committee required to file a statement or report under this Article of each instance of an examination of its statement or report by sending it a duplicate original of the identification form filled out by the person examining its report.

Ill.Rev.Stat. ch. 46, para. 9-17 (1987).

Supreme Court Rule 65(C)(4) provides:

> (4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:
>
> (a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;
>
> (b) a judge or member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; loan from a lending institution in its regular course of business on the same terms generally available to persons

> who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;
>
> (c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, including lawyers who practice or have practiced before the judge.

Ill.Rev.Stat. ch. 110A, Art. I, Rule 65(C)(4) (1987).

Title 28, Section 1257(a) of the United States Code provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or law of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties

> or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. §1257(a)(1986).

INTRODUCTION

For the sake of brevity, Respondent will not include sections in this brief relating to the opinion below and jurisdiction. Respondent will address in Argument those portions of Petitioner's brief which Respondent considers inaccurate or inadequate.

STATEMENT OF THE CASE

Petitioner Bernard S. Neistein was licensed to practice law in Illinois, in 1937. After his admission, Petitioner entered general sole practice in Chicago. (Tr. 78). In 1956, he established a partnership with Irvin F. Richman. (Adm.Ex. 4 at 39). They have practiced law together since then.

During 1980, the firm which Petitioner and Richman founded in 1956 had grown to include approximately

fifteen attorneys. (Tr. 110). It was known at that time as Neistein, Richman, Hauslinger and Young. (Tr. 108). The firm, which had been a professional corporation since the early 1970's, was composed of four main shareholders who acted as senior partners. (Tr. 29, 110).

The firm's business has been concentrated in the area of real estate, commercial law and banking matters. The nature of the practice has involved frequent litigation in the Chancery Division of the Circuit Court of Cook County. (Adm.Ex. 4 at 40).

In 1980, Petitioner and his firm owed 25% of the stock of the Republic Bank of Chicago, 6501 South Pulaski, Chicago. (Tr. 111; Adm.Ex. 3 at 9). The bank was sold on or about October 31, 1984. (Tr. 111-112).

Petitioner received a profit of $325,000.00 or $345,000.00 from the sale. (Tr. 123).

Petitioner first met Judge Reginald J. Holzer, a judge of the Circuit Court of Cook County, Illinois, during the 1950's. Petitioner never became a social friend of Holzer. (Tr. 31). He never personally appeared before Holzer in any pending case. (Tr. 37). Between 1978 and 1982, members of Petitioner's law firm appeared as counsel of record before Holzer in the Circuit Court of Cook County in 14 cases. (Complaint and Answer at par. 11).

At the end of 1979 or early in 1980, Petitioner met Holzer in a hallway of the Civic Center, Chicago. Holzer told Petitioner that he wanted to speak to him and would soon telephone Petitioner.

(Tr. 33). A week or two later, Holzer telephoned Petitioner and invited him to his chambers. (Tr. 33-34).

When Petitioner met with Holzer, the judge related that he, Holzer, "[w]asn't liquid at the time" and needed a $10,000.00 loan. Petitioner told Holzer that he would get back to him. (Tr. 34). Petitioner discussed Holzer's request with Richman. (Tr. 34, 112-113). Richman told Petitioner that they could not loan any money to the judge, but if the judge qualified for a loan, he should go to the Republic Bank of Chicago. (Tr. 113). Within the week, Petitioner informed the judge of their decision. (Tr. 37-38).

Richman telephoned Marvin E. Schatzman, the President and Chief Executor Officer of Republic Bank and asked Schatzman to send Holzer the necessary paperwork for a $10,000.00

loan. (Tr. 253). The bank sent the necessary paperwork directly to Holzer. (Tr. 253-254). Sometime thereafter, the bank approved a $10,000.00 unsecured loan for the judge. (Tr. 252, 255).

Holzer failed to make the interest payments due on June 28, 1980. (Tr. 121). Petitioner told Holzer that the judge had not made a payment on the loan. Holzer then told Petitioner to pay the principal and the interest. (Tr. 41-42). Petitioner did not respond and returned to his office where he met with Richman. (Tr. 42). Petitioner and Richman decided to pay the loan.

During 1980 and 1981, Petitioner and Richman paid a total of $8,770.67 in principal and interest on the Holzer loan. (Adm.Ex. 7-20). Periodically, Holzer would contact Petitioner and ask the lawyer to come to his chambers. When

Petitioner would arrive, Holzer would hand him a white slip and ask Petitioner to make a payment. (Tr. 47-8). Petitioner and Richman would pool their money and Richman would purchase a money order. (Tr. 47-8, 130-1). Richman would sign Holzer's name on the money orders. He would then mail the money order and the white slip to the Bank. (Tr. 130). Petitioner and Richman purchased a total of fourteen money orders for the judge between June, 1980 and June, 1981.

The last payment made on the Holzer loan was June 23, 1981. (Adm.Ex. 20; Tr. 152). Petitioner and Richman stopped making payments because they claim Holzer stopped asking them to make payments. (Tr. 66). Holzer apparently made the remaining payments himself until the loan was paid off. (Adm.Ex. 4 at 54).

At no time were opposing counsel in any action pending before Holzer ever informed of the payments to the judge. (Tr. 145-6). At no time was Holzer's recusal sought in firm cases pending before him. (Adm.Ex. 5 at 46). At no time did Petitioner ever receive from Holzer repayment of any portion of the monies paid toward the loan. (Adm.Ex. 5 at 50-52). At no time did Petitioner ever bring Holzer's conduct to the attention of the United States Attorney, Cook County States Attorney, the Judicial Inquiry Board or the Attorney Registration and Disciplinary Commission. (Tr. 56).

On May 5, 1985, an indictment was filed in the United States District Court for the Northern District of Illinois, Eastern Division, in the matter entitled, United States v. Reginald Holzer, 85 CR

287 (N.D. Ill.). The indictment alleged that Holzer engaged in a scheme to extort personal financial advantages from Petitioner. (Complaint and Answer, Background at 3).

On February 18, 1986, Holzer was found guilty and sentenced to prison. (Complaint and Answer, Background at 4). Holzer was found not guilty of extorting Petitioner and Richman. United States v. Holzer, 85 CR 287 (N.D. Ill.).

On September 10, 1986, the Administrator of the Attorney Registration and Disciplinary Commission filed a complaint against Petitioner pursuant to Illinois Supreme Court Rule 753. Petitioner was charged inter alia with giving things of value to judicial and political officials in violation of the Illinois Code of Professional

Responsibility. On October 6, 1986, Petitioner's answer was filed. Subsequently, discovery ensued.

Hearing was conducted on May 27, 1987 and July 15, 1987. During the course of hearing, evidence was introduced to support each of the counts.

On December 28, 1987, the report of the Hearing Board was filed. The Hearing Board found that Petitioner had violated Disciplinary Rule 7-110(a) of the Illinois Code of Professional Responsibility, by making payments on Judge Holzer's loan. (Hrg.Bd.Rpt. at 6). The Hearing Board recommended that Petitioner be suspended from the practice of law for a period of 30 months. (Hrg.Bd.Rpt. at 7).

On January 12, 1988, the Administrator filed exceptions to the Hearing Board report.

On January 20, 1988, Petitioner filed exceptions to the Hearing Board report. Subsequently, the issues were briefed and argued before the Review Board.

On May 17, 1988, the report and recommendation of the Review Board was filed. The members of the Review Board concurred with the findings of fact and conclusions of law of the Hearing Board. The Review Board also recommended that Petitioner be suspended from the practice of law for a period of 30 months.

On June 3, 1988, the Administrator filed a petition for leave to file exceptions with the Supreme Court of Illinois. The Administrator excepted to the recommendation of suspension and asked that Petitioner be disbarred.

On June 6, 1988, Petitioner filed his exceptions to the report and

recommendation of the Review Board. Petitioner excepted to both the findings and recommendation of the Review Board.

On October 3, 1988, the Court allowed the Administrator's petition for leave to file exceptions and the Petitioner's exceptions.

On October 25, 1989, after considering briefs and oral arguments, the Supreme Court of Illinois issued an order suspending both Petitioner and his partner from the practice of law for a period of 30 months.

On November 17, 1989, Petitioner filed a Petition for Rehearing with the Supreme Court of Illinois.

On December 6, 1989, the Supreme Court of Illinois denied the petition.

On December 11, 1989, Petitioner filed a Motion to Stay Mandate with the

Supreme Court of Illinois so as to permit Petitioner time to seek review in the Supreme Court of the United States.

On December 19, 1989, the Supreme Court of Illinois issued an order staying the mandate.

On March 2, 1990, Petitioner filed his Petition for Writ of Certiorari to the Illinois Supreme Court with the Clerk of the United States Supreme Court.

On March 2, 1990, Petitioner served Respondent with copies of his Petition for Writ of Certiorari filed with the Supreme Court of the United States.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari to the Supreme Court of Illinois should be denied for the following reasons:

First, Disciplinary Rule 7-110(a) does not violate the equal protection clause of the United States Constitution. The policy objective of Rule 7-110(a) is to preserve an independent and impartial judiciary. Rule 7-110(a) reasonably prohibits non-campaign loans or gifts to a judge, because they are not regulated or disclosed. Rule 7-110(a) allows campaign loans or gifts to a judge, because they are regulated and disclosed. Thus, Rule 7-110(a) bears a rational relationship to the objective of preserving an impartial judiciary.

Second, as to his due process claim, Petitioner has failed to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a). Petitioner failed to timely and adequately present his due process claim to the Supreme Court of Illinois. Further, Petitioner failed to

raise his claim of bias or prejudice in the original proceeding. Thus, Petitioner has waived his right to raise the issue of recusal.

ARGUMENT

I. AN ILLINOIS ATTORNEY DISCIPLINARY RULE PROHIBITING LOANS OR GIFTS TO A JUDGE EXCEPT THOSE LOANS OR GIFTS MADE AS CAMPAIGN CONTRIBUTIONS DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

The Equal Protection Clause of the United States Constitution guarantees that similar people will be treated equally by the laws. U.S. CONST. amend. XIV, §1. In order to have any law reviewed under the equal protection clause, one must be able to show that the regulation unlawfully classifies a person in some way.

Petitioner fails to establish either that Rule 7-110(a) classifies persons in

terms of their ability to exercise a fundamental right or establishes a suspect classification based upon race, national origin, alienage, illegitimacy or gender. Thus, Rule 7-110(a) is proper if it bears any rational relationship to the end sought to be achieved by the State of Illinois.

The States have a compelling interest in the practice of professions within their boundaries. Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975). The interest of the States in regulating lawyers is especially great because lawyers are essential to the primary governmental function of administering justice, and have historically been "officers of the courts." Goldfarb, 421 U.S. 773, 792 (1975).

State courts also have the inherent authority to regulate the admission to the practice of law and the discipline of attorneys who have been admitted to practice before it. Goldfarb, 421 U.S. 773, 789 (1975). The supervision of attorney conduct is one of the most crucial functions of the Supreme Court of Illinois. See In re Neff, 83 Ill.2d 20, 25, 413 N.E.2d 1282, 1284 (1980).

The policy objective of Rule 7-110(a) is to preserve an independent and impartial judiciary. In re Corboy, et al., 124 Ill.2d 29, 37-38, 528 N.E.2d 694, 697 (1988); See Illinois Code of Professional Responsibility EC 7-34 (1970). It is a prophylactic rule designed not only to forestall lawyers from seeking to exercise improper influence over the judiciary, but also to eliminate even the appearance of improper

influence. In re Corboy, et al., 124 Ill.2d 29, 38, 528 N.E.2d 694, 697 (1988).

Non-campaign loans or gifts, such as those made by Petitioner, are prohibited because they are not regulated and are not disclosed to the public nor to other attorneys. In re Neistein, 132 Ill.2d 104, 112-113, 547 N.E.2d 198, 202 (1989). Such loans or gifts create an appearance of impropriety and denigrate the integrity of the legal system in the eyes of the public. Further, the clandestine nature of non-campaign loans or debts facilitates the opportunity for attorneys to seek to influence members of the judiciary.

In contrast, the Supreme Court of Illinois determined it was reasonable to provide an exception concerning gifts and loans made to a designated judicial campaign fund. See, Ill.Rev.Stat. ch. 110A, Art. VIII, Rule 7-110(a) (1980)(amended 1988).[1] Loans or gifts to candidates or their committees must be reported pursuant to the Disclosure of Campaign Contributions and Expenditures Act. Ill.Rev.Stat. ch. 46, para. 9-1 to 9-27 (1987). As the Illinois Supreme

---

1/ The drafters of Rule 7-110(a) recognized that lawyers should not be second-class citizens, and constitutional problems might be raised by a regulation restricting lawyer contributions to political campaigns. Ill.Ann.Stat. ch. 110A, Art. VIII, Rule 7-110, committee comments (Smith-Hurd 1980).

Court noted, campaign loans or gifts are publicly disclosed, thereby preserving the policy objective of Rule 7-110(a) of maintaining an impartial judiciary. In re Neistein, 132 Ill.2d 104, 112-113, 547 N.E.2d 198, 202 (1989).

The Supreme Court of Illinois seeks to maintain an independent and impartial judiciary. Disciplinary Rule 7-110(a) is rationally related to that objective. Thus, Petitioner fails to establish that Disciplinary Rule 7-110(a) violates the equal protection clause of the United States Constitution.

II. PETITIONER HAS FAILED TO INVOKE FEDERAL JURISDICTION PURSUANT TO 28 USC §1257(a) AS TO HIS DUE PROCESS CLAIM BECAUSE HE FAILED TO TIMELY BRING HIS FEDERAL CLAIM TO THE ATTENTION OF THE ILLINOIS SUPREME COURT WITH FAIR PRECISION AND BECAUSE HE FAILED TO PROMPTLY ASSERT A CLAIM OF BIAS OR PREJUDICE IN THE ILLINOIS SUPREME COURT.

Petitioner is required to demonstrate that this Court has jurisdiction to review the judgment of the Supreme Court of Illinois. Petitioner has failed to do so.

This Court cannot consider a federal claim unless a Petitioner either raised the issue in the state court or the state court considered and resolved the federal claim. McGoldrick v. Compagnie Generale, 309 U.S. 430, 434 (1940). When the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in

this Court can affirmatively show the contrary. Street v. New York, 394 U.S. 576, 582 (1969). A Petitioner must show that the federal claim was brought to the attention of the state court with fair precision and in due time. New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928).

Petitioner failed to timely bring his due process claim to the attention of the Illinois Supreme Court, with any degree of precision. On February 2, 1989, he filed a brief and appendix in the Supreme Court of Illinois. Petitioner raised no due process claim in that brief.

On April 7, 1989, Petitioner filed a reply brief and an appendix, in the Supreme Court of Illinois. There, Petitioner again failed to adequately present his due process issue to the Supreme Court of Illinois.[2]

2/

In a footnote found on page eighteen of his twenty-four page reply brief, Petitioner asserted as follows:

Depending upon what justices participate in the decision of this case, there may also be due process issues under the U.S. Constitution, Art. XIVl, Sec. 1, and Illinois Constitution, Art. 1, Sec. 2. Due Process requires a fair, impartial, and unbiased tribunal. Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970); In re Murchinson, 349 U.S. 133, 75 S.Ct. 623 (1955); Collura v. Board of Police Commissioners, 113 Ill.2d 361, 498 N.E.2d 1148, 1151 (1986). (Pet. Reply Br. at 18 n.9).

The language employed by Petitioner does not constitute an adequate articulation of a federal issue.

Petitioner first articulated a federal due process claim with any degree of specification in his petition for rehearing after the judgment of the Supreme Court of Illinois. (Pet.Br. 13).

Raising a federal question for the first time in a petition for rehearing addressed to the highest state court is, however, generally insufficient to invoke federal jurisdiction unless the court actually entertains the petition and expressly decides the question. Consolidated Turnpike Company v. Norfolk and Ocean View Railway Company, 228 U.S. 326, 334 (1913). As the Illinois Supreme Court denied the petition in the instant case without entertaining the federal question, the general rule precludes review by this Court. To constitute a reviewable judgment under such circumstances, the order denying the

petition for rehearing must be more than a cursory recitation that the petition has been fully or maturely considered and is accordingly denied. Consolidated Turnpike, 228 U.S. 326, 333-334 (1913).

Further, Petitioner clearly does not fit within any exception to this general rule. Thus, Petitioner has failed to invoke the jurisdiction of this Court.

In the alternative, Petitioner waived his right to raise the issue of recusal. The discipline of attorneys is in the nature of an original proceeding. In re Mitan, 75 Ill.2d 118, 123-124, 387 N.E.2d 278, 280 (1979) cert.denied, 444 U.S. 916 (1979). Under Illinois law, a failure to object at the original proceeding generally constitutes a waiver of the right to raise the issue on appeal. People v. Carlson, 79 Ill.2d 564, 576-577, 404 N.E.2d 233, 239 (1980).

One must promptly assert a claim of bias or partiality of a judge in order to warrant disqualification. E & E Hauling, Inc. v. Pollution Control Board., 107 Ill.2d 33, 38, 481 N.E.2d 664, 666 (1985) (quoting Duffield v. Charleston Area Medical Center, Inc., 503 F.2d 512, 515 (4th Cir. 1974). It would not be proper to allow a party to withhold a claim of bias until he first seeks a ruling in a matter and then permit him to assert it after he receives an unfavorable ruling. City of Rockford v. County of Winnebago, 186 Ill.App.3d 303, 313, 542 N.E.2d 423, 431 (1989) (citing Waste Management of Illinois v. Pollution Control Board, 175 Ill.App.3d 1023, 1039-1040, 530 N.E.2d 682, 695 (1988).

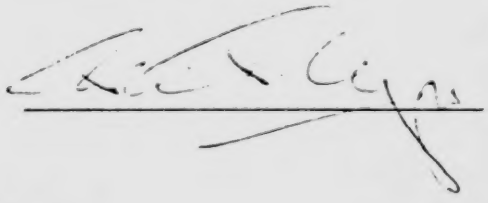
Petitioner did not request recusal nor raise the issue of bias or impartiality until his petition for

rehearing. Petitioner was aware of the alleged disqualifying circumstances before he first sought a ruling in the Illinois Supreme Court. Thus, Petitioner cannot here claim a lack of due process based on an alleged biased or impartial judiciary.

CONCLUSION

For the reasons set forth above, Respondent respectfully submits the Petition for Writ of Certiorari be denied.

Respectfully submitted,



James J. Grogan
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
(312) 346-0690

Attorney for Respondent

Dana Cook Baer, J.D., DePaul University College of Law, assisted in the preparation of this brief.

bernard1/dmk